

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**STEVEN J. SIDEWATER, *et al.*,
Plaintiffs,**

V.

**SCHNADER HARRISON SEGAL &
LEWIS LLP,**

Defendant.

Civ. No. 22-4088

ORDER

The gravamen of Plaintiffs’ Amended Complaint is that the professional incompetence of the Schnader firm caused them considerable financial injury in connection with a bankruptcy proceeding in the Eastern District of Virginia. (See Doc. No. 16.) Plaintiffs seek to proceed against Schnader on the (presumably) alternative bases of Breach of Contract (Count I) and Professional Negligence (Count II). See Fed. R. Civ. P. 8(d)(2) (“A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.”); Mill Run Assocs. v. Locke Prop. Co., 282 F. Supp. 2d 278, 290-91 (E.D. Pa. 2003) (declining to dismiss the plaintiff’s tort claims on “gist of the action” grounds where it was “unclear at this stage of litigation whether the ‘gist’ of the action sounds in contract or tort”). Schnader’s arguments to dismiss these claims are more appropriately raised at summary judgment. Plaintiffs’ remaining tort claims—Breach of Fiduciary Duty (Count III) and Tortious Inference with Contractual Relations (Count IV) appear to be restatements of Count II, as does Plaintiffs’ claim for Declaratory and Injunctive Relief (Count V). Accordingly, at this early stage, I will dismiss Counts III, IV, and V without prejudice. Plaintiffs’ claim for counsel fees is premature and will also be dismissed without prejudice. If, after taking discovery, Plaintiffs believe that they

have separate grounds for bringing these or other claims, they may seek permission to file a Second Amended Complaint.

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AND NOW, this 17th day of July, 2023, upon consideration of Defendant's Motion to Dismiss the Amended Complaint and all related submissions (Doc. Nos. 16, 17, 20, 21, 23), it is hereby **ORDERED** that Defendant's Motion to Dismiss (Doc. No. 17) is **GRANTED in part**, and that Counts III, IV, V, and Plaintiffs' claim for counsel fees are **DISMISSED without prejudice**. The Motion to Dismiss (Doc. No. 17) is otherwise **DENIED**. Defendant's previous Motion to Dismiss the original Complaint (Doc. No. 12) is **DENIED as moot**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond